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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,949	03/25/2004	Robert Aigner	068758.0180	6346
31625	7590	10/11/2005		
BAKER BOTTS L.L.P. PATENT DEPARTMENT 98 SAN JACINTO BLVD., SUITE 1500 AUSTIN, TX 78701-4039				
			EXAMINER TUGBANG, ANTHONY D	
			ART UNIT 3729	PAPER NUMBER

DATE MAILED: 10/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/808,949

Applicant(s)

AIGNER ET AL.

Examiner

A. Dexter Tugbang

Art Unit

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 September 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Attachment.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s).
13. ☐ Other: _____.

A. Dexter Tugbang
Primary Examiner
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Attachment to Advisory Action

I. Election/Restriction

The applicant's election by original presentation, with traverse of the invention of Species A, in the reply filed on 9/26/05 is acknowledged. The traversal is on the ground(s) that because all of the dependent Claims (i.e. 31, 32, 37, 38 and 40) depend from Claim 1, that claim 1 is generic and thus, all of the claims should be examined. This is not found persuasive because as the examiner reiterates, Claim 1 is not considered to be a generic claim. Regardless of the claim dependency, Claim 1 was amended (in the response filed on 5/6/05) to include the limitations of Claim 2, which was directed to Species A. The incorporation of Claim 2 (directed to Species A) into Claim 1 results in Claim 1 no longer being a generic claim as Claim 1 now includes the features of Species A.

The requirement is still deemed proper and is therefore made FINAL.

II. Rejections under 35 U.S.C. 103

In regards to the merits of Seipler and Berlingcourt, each of these references are considered by one of ordinary skill in the art to be in the same technical field with the applicant(s) own invention because: 1) each reference is in the same field of endeavor (i.e. stacked piezoelectric layers); and 2) each reference is reasonably pertinent to the particular problem with which the present inventor(s) were involved (i.e. problems associated with stacked piezoelectric layers manufactured for a piezoelectric component).

Second, the examiner notes that layer 3 of Seipler can be read as an equivalent "substrate" because it acts to support the other layers over it, such as layers 1 and 2. What

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special properties of a “substrate” are the applicant(s) referring to as to why layer 3 of Seipler cannot be considered as a “substrate”?

And finally, Seipler was relied upon to show the “second openings” (anyone of openings 11, 12, 13 formed in the third conductive layer (anyone of layers 5, 6 and 7). What Seipler does not mention is whether or not the stacked layers are “stacked crystal filters”. To utilize the stacked piezoelectric layers as stacked “crystal filters” was taught by Berlingcourt for his associated advantages.

Therefore, the examiner maintains that the combination of Seipler and Berlingcourt would be obvious to one of ordinary skill in the art.